

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

2<sup>ND</sup> STREET DELI  
Respondent

Case No.: I-00-70258

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**FINAL ORDER**

**I. Introduction**

On June 21, 2001, the Government served a Notice of Infraction upon Respondent 2<sup>nd</sup> Street Deli, alleging that it violated 23 DCMR 3012.1, which requires persons engaged in the operation of restaurants, delicatessens or catering businesses to take all necessary precautions to keep the premises free from rats and vermin. The Notice of Infraction alleged that the violation occurred at 209½ Pennsylvania Avenue, S.E., on April 9, 2001, and sought a fine of \$1,000.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, on July 23, 2001, this administrative court issued an order finding Respondent in default and subject to the statutory penalty of \$1,000 required by D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f), and requiring the Government to serve a second Notice of Infraction.

Respondent filed an untimely answer with a plea of Deny on July 24, 2001. I then vacated the portion of the July 23, 2001 order requiring the issuance of a second Notice of

Infraction, and set a hearing date of August 29, 2001. All parties appeared for the hearing. Robin Espy, the inspector who issued the Notice of Infraction, appeared on behalf of the Government and Young Lee, owner of Respondent 2<sup>nd</sup> Street Deli, appeared on its behalf. Based upon the testimony of the witnesses, my evaluation of their credibility, and the items admitted into evidence, I now make the following findings of fact and conclusions of law.

## **II. Findings of Fact**

As its name suggests, Respondent 2<sup>nd</sup> Street Deli is a delicatessen. On April 9, 2001, Ms. Espy inspected the facility. In a basement food storage area, she observed rat droppings and also smelled an odor of rats. She also observed several cracks and holes in the floor and walls that could enable rats to enter the premises. Ms. Espy issued a summary suspension of Respondent's license, based upon her observation of a number of conditions at the facility, including the evidence of the presence of rats.

Ms. Lee did not deny that rats were present at the property. Respondent had arranged for twice-monthly inspections and treatments by a pest control company, beginning five months before Ms. Espy's inspection. After that inspection, Respondent undertook efforts to locate holes in the basement floor and walls and to fill them with concrete. Respondent also arranged for the pest control company to return to the property on the day of Ms. Espy's inspection in order to apply additional treatments for rats. Respondent's Exhibit ("RX") 200 shows, however, that the pest control company still found evidence of rats in the building in July 2001, three months after Ms. Espy's inspection. It is difficult for Respondent to control rats, because it is located in a row of attached, old buildings, with numerous passageways for rats running underneath.

Respondent received the Notice of Infraction some time in June, but did not mail its answer until July 11, 2001, the twentieth day after the Government served it by mail. The Postal Service returned the answer to Respondent for insufficient postage, apparently because a one-cent stamp that Respondent had affixed to the envelope to account for a rate increase had fallen off. Respondent then re-mailed the answer, and the Docket Clerk received it on July 24, 33 days after service.

### **III. Conclusions of Law**

The rule at issue provides:

All persons engaged in the operation of any restaurant, delicatessen, or catering business shall be required to take all necessary precautions to keep the premises free from rats and vermin.

23 DCMR 3012.1

Section 3012.1 “requires a [food establishment] owner to take sufficient advance precautions against the presence of rats, to be continually vigilant for their presence at the restaurant and to take immediate action if they are found there.” *DOH v. Rim*, OAH No. I-00-70226 at 6 (Final Order, July 8, 2002). It is undisputed that the basement in Respondent’s building contained holes and cracks that permitted rats to enter. Respondent’s failure to block those entryways prior to Ms. Espy’s visit was a failure to take a necessary precaution against the presence of rats and, therefore, violated § 3012.1.

Respondent’s claim that the building is old and susceptible to infestation by rats is not a defense to a charge of violating § 3012.1.

Section 3012.1 is an important public health measure, intended to safeguard the patrons of Respondent's establishment, as well as those who live and work nearby. *Sowell v. Hyatt Corp.*, 623 A.2d 1221, 1226 n.11 (D.C. 1993) (identifying § 3012 as a health protection measure). Rats in a food establishment present a serious problem that must be addressed, regardless of the age of the building.

*DOH v. M&M Food Vending, Inc.*, OAH No. I-00-70243 at 4 (Final Order, June 11, 2002). To be sure, protecting against the presence of rats in older building may be difficult. Pursuant to § 3012.1, however, those who choose to operate a food establishment in such a building must undertake that effort, difficult though it may be.

The Rodent Control Act of 2000 classified a violation of § 3012.1 a Class 1 infraction, which is punishable by a fine of \$1,000 for a first offense.<sup>1</sup> 16 DCMR 3201. I therefore will impose a fine in that amount.

The Civil Infractions Act, D.C. Code Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party does not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). Respondent did not mail its answer until the day that the statute required it to be received by the Docket Clerk, thereby guaranteeing that the answer would not arrive until the statutory deadline had passed. I need not decide, therefore, whether the loss of the one-cent stamp and the resulting return of the letter by the Postal Service would have constituted good cause standing alone, as Respondent's answer would have been late even without that mishap. Respondent delayed unreasonably in mailing its answer and,

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<sup>1</sup> The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. See 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 3012.1. 47 D.C. Reg. at 6339 (August 11, 2000).

therefore, has not shown good cause for its untimely filing. Consequently, the statutory penalty of \$1,000 must be imposed.

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondent shall pay a total of **TWO THOUSAND DOLLARS (\$2,000)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

**FILED 07/09/02**

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John P. Dean  
Administrative Judge